



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 200522–0145]

RIN 0648-BJ80

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Extend an Emergency Action to Extend Portions of the Fishing Year 2019 Scallop Carryover Provisions

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; emergency action extension.

SUMMARY: This temporary rule extends emergency measures that extend portions of the fishing year 2019 carryover provisions in the Atlantic Sea Scallop Fishery Management Plan into the 2020 fishing year published on June 1, 2020 (85 FR 33027), which is scheduled to expire on November 29, 2020. This action is necessary to prevent the Limited Access General Category Individual Fishery Quota vessels from losing any carryover granted by this emergency action and to prevent the Nantucket Lightship-West Access Area from opening on November 29, 2020. This action is intended to provide additional time for Limited Access General Category Individual Fishery Quota vessels to land the 2019 carryover allocation granted by the original emergency action and to provide the New England Fishery Management Council additional time to develop a plan for the management of the Nantucket Lightship-West Access Area while it remains closed.

DATES: Effective November 29, 2020, through June 1, 2021. The expiration date of the temporary rule published June 1, 2020, is extended to June 1, 2021, unless superseded by another action, which will publish in the ***FEDERAL REGISTER***.

ADDRESSES: For this action, NMFS developed a Supplemental Impact Report (SIR) for the Environmental Assessment (EA) for Framework 32 to the Atlantic Sea Scallop Fishery Management Plan (FMP) that describes the measures in this temporary rule. Copies of the SIR and the Regulatory Impact Review of this rulemaking are available on the internet at <https://www.fisheries.noaa.gov/region/new-england-mid-atlantic>.

FOR FURTHER INFORMATION CONTACT: Travis Ford, Fishery Policy Analyst, 978-281-9233.

SUPPLEMENTARY INFORMATION:

Background

At the request of the New England Fishery Management Council, NMFS published an emergency action on June 1, 2020, (85 FR 33027), for the Atlantic Sea Scallop Fishery Management Plan (FMP) that:

- Allowed limited access general category (LAGC) individual fishing quota (IFQ) vessels to carryover all fishing year 2019 unharvested quota into fishing year 2020;
- Allowed any access area carryover pounds and unharvested research set-aside (RSA) compensation pounds from fishing year 2019 to be available for harvest through August 31, 2020; and
- Closed the Nantucket Lightship-West Access Area (NLS-W) to scallop fishing beginning on September 1, 2020, to reduce bycatch.

These measures allowed for more flexibility to harvest 2019 carryover allocations and were intended to mitigate the negative impacts experienced by the scallop industry that began at the end of the 2019 fishing year (March 2020) due to ongoing health

mandates and travel restrictions that made it difficult for vessels to make trips. These impacts include disruptions in getting supplies and the inability for crew to access ports.

This action extends portions of this emergency action to prevent the LAGC IFQ vessels from losing any carryover granted by this emergency action and to prevent NLS-W from opening on November 29, 2020, when the emergency action expires under the Magnuson-Stevens Fishery Conservation and Management Act's (Magnuson-Stevens Act) limitation on the duration of an emergency action. Therefore, this action would extend the following emergency action measures through June 1, 2021, or until replaced by a subsequent action, whichever comes first:

- Extend the ability of LAGC IFQ vessels to harvest any fishing year 2019 carryover granted by this emergency action through the end of the 2020 fishing year (March 31, 2021); and
- Maintain the closure of NLS-W for an additional 186 days unless it is opened or closed by the Council in another action.

The NLS-W closure extension is intended to minimize unwanted bycatch of flatfish and is not expected to adversely impact the scallop fleet because these vessels have flexibility to fish in other areas. There is no need to extend the access area and RSA compensation pounds from fishing year 2019 because the Council only requested to allow for that harvest through August 31, 2020.

NMFS's policy guidelines for the use of emergency rules (62 FR 44421; August 21, 1997) specify the following three criteria that define what an emergency situation is, and justification for final rulemaking: (1) The emergency results from recent, unforeseen events or recently discovered circumstances; (2) the emergency presents serious conservation or management problems in the fishery; and (3) the emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts

on participants to the same extent as would be expected under the normal rulemaking process. NMFS's policy guidelines further provide that emergency action is justified for certain situations where emergency action would prevent significant direct economic loss, or to preserve a significant economic opportunity that otherwise might be foregone. As noted in the June 1, 2020, emergency rule, NMFS has determined that extending portions of the fishing year 2019 scallop carryover provisions meets the three criteria for emergency action.

The Council is developing Framework Adjustment 33 to the Scallop FMP, which we expect to implement in May 2021, prior to the expiration of the emergency action extension. Framework 33 will set specifications for the 2021 fishing year.

Comments and Responses

NMFS received two comments in response to the emergency action. The first comment was in opposition to the action due to concern that some fishermen may already be receiving additional aid because of their inability to fish. As described above, this action does not add any new allocation, it only extends the time period that carryover can be fished. Extending these carryover provisions will not cause any annual catch limits to be exceeded in the scallop fishery. The second comment was unrelated to this action.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and is consistent with the national standards and other provisions of the Magnuson-Stevens Act and other applicable laws.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(b)(B) that it is contrary to the public interest and impracticable to provide for prior notice and opportunity for the public to comment. As more fully explained above, the reasons justifying promulgation of this rule on an emergency basis, coupled with the fact that the public has had the opportunity to comment on NMFS' intent to extend this

emergency, make solicitation of public comment unnecessary, impractical, and contrary to the public interest. In the interest of receiving public input on this action, the SIR analyzing this action was made available to the public and the original temporary final rule solicited public comment.

For these same reasons stated above, pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator finds good cause to waive the full 30-day delay in effectiveness for this rule. This rule extends some measures of the rule currently in place for an additional 186 days. The need for this extension was fully anticipated and announced to the public in the initial emergency rule which published on June 1, 2020. Accordingly, the entities affected by this rule and the public have no need to be made aware of or adjust to this rule by delaying its effectiveness for 30 days. The primary reason for delaying the effectiveness of Federal regulations is not present, and, therefore, such a delay would serve no public purpose. It would be contrary to the public interest if this rule does not become effective on November 29, 2020, because LAGC IFQ vessels would lose any carryover granted by this emergency action and the NLS-W would open to fishing. Moreover, failing to have the rule effective on November 29, 2020, may lead to confusion in the fishing community. For these reasons, there is good cause to waive the requirement for delayed effectiveness.

This action is being taken pursuant to the emergency provision of MSA and is exempt from OMB review.

Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Authority: 16 U.S.C. 1801 *et seq.*

Date: November 19, 2020.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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